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6

7 **IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

8 MARCUS LABERTEW a/k/a MARK  
9 LABERTEW and JANE DOE  
10 LABERTEW, HUSBAND AND WIFE;  
11 JOHN MCDERMOTT a/k/a JACK  
12 MCDERMOTT and JENNIFER  
MCDERMOTT, HUSBAND and WIFE,

13 Plaintiffs,  
14 v.

15 CHARTIS PROPERTY CASUALTY  
COMPANY, otherwise known as  
16 AIG CASUALTY COMPANY, and 21ST  
CENTURY NORTH AMERICA  
17 INSURANCE COMPANY, f/k/a  
AMERICAN INTERNATIONAL  
18 INSURANCE COMPANY,  
19

20 Defendants.

21 No. CV-13-01785-PHX-DGC

22 **PLAINTIFF'S AMENDED  
COMPLAINT**

23 (ASSIGNED TO THE HONORABLE  
JUDGE DAVID G. CAMPBELL)

24 **PLAINTIFFS DEMAND A TRIAL BY  
JURY.**

25 Plaintiffs, MARCUS LABERTEW, a/k/a MARK LABERTEW, and JANE DOE  
26 LABERTEW, HUSBAND AND WIFE; JOHN MCDERMOTT a/k/a  
JACK MCDERMOTT and JENNIFER MCDERMOTT, husband and wife, by their  
attorneys, THE NATHANSON LAW FIRM, file this Amended Complaint, pursuant to  
this Court's April 12, 2017, Order, against Defendants CHARTIS PROPERTY  
CASUALTY COMPANY, otherwise known as AIG CASUALTY COMPANY, and  
21ST CENTURY NORTH AMERICA INSURANCE COMPANY, f/k/a AMERICAN

1 INTERNATIONAL INSURANCE COMPANY, as follows:

2       1. Plaintiffs, MARCUS LABERTEW, a/k/a MARK LABERTEW, and  
 3 JANE DOE LABERTEW, HUSBAND and WIFE; JOHN McDERMOTT a/k/a  
 4 JACK McDERMOTT and JENNIFER McDERMOTT, husband and wife, filed an  
 5 Arizona state court lawsuit against Fred R. Auzenne and Loral Langemeier in the  
 6 Superior Court for the State of Arizona, Case No. CV 2010-051209, *Labertew et al. v.*  
 7 *Auzenne et al.* (hereinafter sometimes referred to as the “state court action”). Plaintiffs  
 8 claimed that Auzenne and Langemeier defrauded Marcus Labertew and John  
 9 McDermott to get them to work for Auzenne and Langemeier’s multilevel health-  
 10 products company, Bio-Novix; defamed them regarding their employment at that  
 11 company, owed them salary and expense money, and got John McDermott falsely  
 12 arrested and imprisoned in Korea while on a business trip for that company.

13       2. Defendants, CHARTIS PROPERTY CASUALTY COMPANY,  
 14 otherwise known as AIG CASUALTY COMPANY, and 21ST CENTURY NORTH  
 15 AMERICA INSURANCE COMPANY, f/k/a AMERICAN INTERNATIONAL  
 16 INSURANCE COMPANY (hereinafter collectively referred to as “CHARTIS”), were  
 17 the insurance carriers for Langemeier.

18       3. On January 15, 2013, before trial in the state court, Langemeier tendered  
 19 her defense to CHARTIS relating to Case No. CV 2010-051209, *Labertew et al. v.*  
 20 *Auzenne et al.* Included with the tender letter were Plaintiffs’ First Amended  
 21 Complaint, and excerpts from John McDermott’s deposition in which he claimed he  
 22 suffered a stroke as a result of defendants’ actions, as well as other case information.

23       4. By letter dated February 4, 2013 to Langemeier’s counsel, CHARTIS  
 24 denied coverage and denied Langemeier’s tender of defense without seeking any  
 25 additional information from Langemeier or her then representatives.

26       5. CHARTIS owed Langemeier a duty to defend her from all potentially  
 27 covered claims alleged in the First Amended Complaint.

28

1       6.    Because CHARTIS owed Langemeier a duty to defend her from all  
2 claims if there was one single potentially covered claim, which was clearly the case  
3 here given the physical injury (stroke) claim made by McDermott, CHARTIS owed  
4 Langemeier a duty to defend her from all claims asserted in the First Amended  
5 Complaint.

6       7.    CHARTIS owed Langemeier a duty to investigate and come forward with  
7 additional facts beyond the tendered materials to support its denial of a defense and the  
8 denial of coverage/indemnity.

9       8.    CHARTIS denial letter incorrectly stated that Langemeier was an officer  
10 of BioNovix.

11      9.    CHARTIS performed no investigation to determine whether Langemeier  
12 had a financial stake in BioNovix.

13      10.   CHARTIS came forward with no evidence that Langemeier made a  
14 prejudicially late tender because no such evidence exists.

15      11.   On February 27, 2013, the parties in the state court action, agreed to the  
16 material terms of a settlement agreement of that action. Langemeier stipulated to a  
17 judgment of \$1,500,000, which was reasonable on her behalf given the conduct of the  
18 Defendants, and she and Auzene agreed to pay a sum in cash to Plaintiffs as well.

19      12.   As part of the settlement, Langemeier entered into a *Damron* agreement  
20 with Plaintiffs because her insurance carriers refused to defend and indemnify her in  
21 the state court action [Doc. 1-16, pp. 10-29]. Pursuant thereto, Langemeier assigned  
22 her claims against CHARTIS to Plaintiffs pursuant to *Damron v. Sledge*, 105 Ariz. 11,  
23 460 P.2d 997 (1969). These claims included that CHARTIS failed to timely and  
24 properly investigate the claims against Langemeier; improperly denied coverage; failed  
25 to comply with the reasonable expectations of Langemeier; failed to investigate the  
26 duties it owed under the insurance policies; failed to adequately communicate with  
27 and/or advise Langemeier regarding the policies; failed to give equal consideration to  
28 the interests of Langemeier; failed to consider the applicable authority addressing the

1 relevant issues; failed to satisfy its obligations, *inter alia*, to defend and indemnify  
2 Langemeir; and violated state and federal law related to unfair claims handling  
3 practices.

4 13. On June 5, 2013, the Superior Court entered a stipulated judgment  
5 against Judgment Debtor Loral Langemeier.

6 14. The outstanding balance due on the stipulated judgment is \$1,500,000.

7 15. CHARTIS is indebted to Plaintiffs under *Damron* for the bad faith and  
8 unreasonable conduct alleged herein.

9 16. After the entry of judgment in the Superior Court, Plaintiffs filed their  
10 state court garnishment process in the Superior Court case to enforce their *Damron*  
11 agreement and assignment [Doc. 1-16, pp. 31-59]. The Defendant-Garnishees were  
12 served with that process while the case was in the state court, but they did not file an  
13 Answer in state court [Doc. 1, at p. 2]. Instead, the Garnishees first filed a Notice of  
14 Removal in this Court, alleging [Doc. 1, at pp. 3-5] that this case is a “civil action”  
15 under the federal diversity statute, 28 U.S.C. § 1332.

16 17. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332, and  
17 Defendants invoked this venue by filing of a Notice of Removal.

18 18. There was a legal duty implied by law in the insurance contract between  
19 CHARTIS and Langemeier, to the effect that the insurance company must act in good  
20 faith in dealing with its insured on a claim, and that violation of that duty of good  
21 faith constituted a tort. The breach of that duty gives rise to an insurance bad faith  
22 claim and tort damages based upon the special relationship that existed between the  
23 insurer here and its insured, Langemeier.

24 19. CHARTIS, as the indemnitor, is bound by the settlement made by its  
25 indemnitee, Langemeier, where, as here, the indemnitor was given notice and an  
26 opportunity to defend, and unreasonably refused that opportunity. Here, that  
27 indemnitor, CHARTIS, is liable to that indemnitee because the settlement Langemeier  
28 made was reasonable and prudent under all the circumstances.

1 WHEREFORE, Plaintiffs, MARCUS LABERTEW, a/k/a MARK LABERTEW,  
2 and JANE DOE LABERTEW, HUSBAND AND WIFE; JOHN MCDERMOTT a/k/a  
3 JACK MCDERMOTT and JENNIFER MCDERMOTT, husband and wife, request this  
4 Court to: (i) enter judgment against Defendants, CHARTIS PROPERTY CASUALTY  
5 COMPANY, otherwise known as AIG CASUALTY COMPANY, and 21ST  
6 CENTURY NORTH AMERICA INSURANCE COMPANY, f/k/a AMERICAN  
7 INTERNATIONAL INSURANCE COMPANY, in an amount in excess of the  
8 jurisdictional minimum for actual and punitive damages; (ii) to impose attorney fees on  
9 Defendants; and (iii) to grant such other and further relief that is legally appropriate.

10 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of April, 2017.

11  
12 THE NATHANSON LAW FIRM

13 /s/Philip J. Nathanson  
14 Philip J. Nathanson

15 *Attorneys for Plaintiffs*  
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1 I hereby certify that on 28<sup>th</sup> day of April, 2017,  
2 I electronically transmitted the foregoing  
3 document to the U.S. District Court Clerk's  
4 Office by using the CM/ECF System for filing  
5 and transmittal of a Notice of Electronic  
filing to the following CM/ECF registrants:

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14 By: Philip J. Nathanson

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